

MINUTES

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Tuesday, June 1, 2004

Division One

**A103835 -- Physicians Committee For Responsible Medicine v. Tyson  
Foods, Inc.**

The order granting Tyson's motion to strike the third through sixth causes of action pursuant to Code of Civil Procedure section 425.16 is reversed. Swager, J. We Concur: Marchiano, P.J. Stein, J. (Certified for Publication.)

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, June 2, 2004

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., Margulies, J., and B. Robbins, Deputy Clerk.

- A101100     Scott Wilbanks, et al.,  
                 v.  
                 Gloria Wolk, et al.  
                 Cause called and argued by Steven Ames Brown, counsel for appellants,  
                 and David Greene, counsel for respondents. Cause ordered submitted.
- A098201     In re Marriage of Watson and Hamirani.  
                 Babar Hamirani,  
                 v.  
                 Michelle Watson.  
                 Cause called and argued by A. Charles Dell'Ario, counsel for appellant,  
                 and Paige Leslie Wickland, counsel for respondent. Cause ordered  
                 submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, June 2, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., Swager, J., and Margulies, J., and B. Robbins, Deputy Clerk.

Justice Stein did not participate in argument of the first case.

A103220 Charles L. Garetson, et al.,  
v.  
Gregory S. Garetson.  
Cause called and argued by Marc L. Sallus, counsel for appellant, and Michael G. Desmarais, counsel for respondent Charles Garetson, via teleconference, and Stan D. Blyth, counsel for respondent William Garetson, via teleconference. Cause ordered submitted.

At this point in the proceedings, Justice Swager left the bench. Justice Stein joined in argument for the remainder of the session.

A102984 The People,  
v.  
Billy Joe Messimer.  
Cause called and argued by Kenneth C. Wikle, counsel for appellant, via teleconference, and Ann Wathen, counsel for respondent. Cause ordered submitted.

A102287 Tony Bello, et al.,  
v.  
ABA Energy Corporation.  
Cause called and argued by Tracy K. Hunckler, counsel for appellant, and William S. Bernheim, counsel for respondent. Cause ordered submitted.

A101414 Michael A. Waul,

A101792 v.

Circuit City Stores, Inc.

Cause called and argued by Michael A. Waul, appellant in pro per, and  
Peter E. Glick, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, June 3, 2004 at 9:00 a.m.

Wednesday, June 2, 2004

Division Five

**A104311 -- In re Marquese R., a Person Coming Under the Juvenile Court Law. The People v. Marquese R.**

The orders are affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.  
(Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, June 3, 2004

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Swager, J., and F. Abad, Deputy Clerk.

- A104703 Jeffrey Garrett Fredenburg,  
v.  
City of Fremont,. et al.  
Cause called and argued by Panos Lagos, counsel for appellant, and Dolores Donohue, counsel for respondents. Cause ordered submitted.
- A103825 Estate of Omega Cole, Deceased.  
Mildred Sullivan,  
v.  
Bank of America, NT & SA.  
Cause called and argued by James Reed, counsel for appellant, and Ashley Dunning, counsel for respondent. Cause ordered submitted.
- A102840 Kevin Lewis, et al.,  
v.  
Chevron U.S.A., Inc.  
Cause called and argued by A. Lee Sanders, counsel for appellants, and Gennaro Filice, counsel for respondent. Cause ordered submitted.
- A103650 Anthony W. Hawthorne, et al.,  
v.  
City of Berkeley, et al.;  
Alan Swain, et al.  
Cause called and argued by Anthony Hawthorne, counsel for appellants, and Zach Cowan, counsel for respondents. Alan Swain, real party in interest in pro per appeared but did not argue. Cause ordered submitted.
- Court adjourned.

Thursday, June 3, 2004 (continued)

Division Two

**A099989 -- The People v. Nythell Ray Collins.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A102089 -- He Sook Hyun v. Chong Chil Park.**

The judgment is affirmed. Haerle, J. I Concur: Ruvolo, J. (See dissenting opinion by Kline, P.J.) (Not for Publication.)

**A100309 -- Mario Juarez v. Boy Scouts of America et al.**

The appeal is dismissed. Costs awarded to respondents. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A099536/A099647 -- Charlene Vine v. Bear Valley Ski Company.**

By the Court: The petition for rehearing is denied. Pollak, J., voted to grant the petition for rehearing. McGuiness, P.J.

Division Five

**A104432 -- In re Orlando A., a Person Coming Under the Juvenile Court Law. The People v. Orlando A.**

The orders of the juvenile court are affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A101273 -- The People v. Gary R. Mitchell.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Friday, June 04, 2004

Division Two

**A101886 -- The People v. Felix Perez Fausto.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Five

**A102843 -- Renee Milligan v. Golden Gate Bridge Highway and Transportation District et al.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)



Monday, June 7, 2004

Division Three

**A103717 -- The People v. John Edward Brown.**

The judgment and sentence imposed are affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

Division Five

**A103826 -- Charles J. Berry v. Dylan E. Berry et al.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A103303 -- Daniel Bruffett et al. v. Chevron U.S.A., Inc.**

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Tuesday, June 8, 2004

Division One

**A101280 -- The People v. Donald Wayne Robinson.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A104738 -- In re Sean S., a Person Coming Under the Juvenile Court Law. The People v. Sean S.**

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Four

**A104633 -- Victoria Badilla v. Duane Leonard, as Special Administrator, etc.**

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

**A101630 -- Marta Priebe v. Russell Nelson.**

The trial court's order granting Priebe a new trial is affirmed, as is the order denying her motion for judgment notwithstanding the verdict. We further hold that the trial court correctly refused to instruct the jury under section 3342, but erred in failing to deliver BAJI No. 6.66. Costs to Priebe on appeal. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Certified for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, June 8, 2004

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; Guardsmark Officer Tamicka Bell, Bailiff.

A103657     Samir Totah et al.  
              v.  
              Carol Trott  
Cause called. Matthew Matiasovich argued for appellants Totah et al. David Replogle argued for respondent. Cause submitted.

At this point the court reconstituted itself to include: Kay, P.J., Reardon, J. and Sepulveda, J.

A103485     Gerry Buckosky et al.  
              v.  
              Virginia Reiss et al.  
Cause called. Ipp appellant Gerald Buckosky argued. Kirk Jenkins and David Young argued for respondents. Cause submitted.

A104286     Tina Baca DeBrenes  
              v.  
              Eric Traub  
Cause called. Kim M. Robinson argued for appellant DeBrenes. Garrett C. Dailey argued for respondent. Cause submitted.

At this point the court reconstituted itself to include: Kay, P.J., Reardon, J. and Rivera, J.

A103838     People  
              v.  
              Jamar Byron Lindsey  
Cause called. Solomon Wollack argued for appellant Lindsey. Ronald Niver argued for respondent. Cause submitted.

A103683      Jingyan Zhu et al.

v.

Leon Wan

Cause called. Richard Simons argued for appellants Zhu. Ken Dzieszinski argued for respondent. Cause submitted.

The court recessed at 11:13 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, June 8, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; Guardsmark Officer Helen Hiramoto, Bailiff.

A100481      People

v.

John William Sloan

Cause called. Stephen Bedrick teleargued for appellant Sloan. Sharon Wooden argued for respondent. Cause submitted.

The Court adjourned at 1:56 p.m.



Wednesday, June 09, 2004

Division One

**A101246 -- Rose M. Bell et al. v. Farmers Insurance Exchange.**

After completion of briefing in this case we filed our opinion in *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715 (*Bell III*). In *Bell III* we reversed that portion of the judgment awarding unpaid double-time compensation of \$1,210, 337. Pursuant to our request the parties filed letter briefs addressing the issue of whether a remand to the trial court was necessary to allow it to reconsider the fee award in light of the reversal of the double-time award. Although that portion of the award is a relatively small portion of the total unpaid overtime compensation owed, it appears that the trial court considered the hours spent on that segment of the case in calculating the total fee award. We therefore remand this matter to the trial court for the limited purpose of permitting it to reconsider that portion of the fee award that may have been attributed to the result obtained on the claim for double-time compensation. Although the trial judge who presided over this lengthy case has retired, we believe that the trial court is the best forum in which to undertake this narrow reconsideration. We express no opinion as to the manner in which the court chooses to conduct its reconsideration, nor do we suggest what modification of the fee award, if any, should result from this limited remand. In all other respects the judgment is affirmed. The parties shall each bear their costs on appeal. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A102984 -- The People v. Billy Joe Messimer.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A101182 -- In re Andrew E., a Person Coming Under the Juvenile Court Law. The People v. Andrew E.**

The order denying rehearing is reversed and ordered vacated. The juvenile court shall rehear the matter de novo in accordance with sections 252 and 254. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Wednesday, June 09, 2004 (continued)

**A102197 -- The People v. E. C. Phillips, III.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J.  
(Not for Publication.)

**A102051 -- Lavonne Ginty v. Parks Study Club, Inc.**

The judgment is affirmed. Ginty is to pay costs. Lambden, J. We Concur:  
Kline, P.J., Haerle, J. (Not for Publication.)

**A102659 -- In re Randi K., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Joseph K.**

The judgment is affirmed. This case is remanded to the juvenile court so that it may evaluate whether modification of the visitation order is necessary in light of this court's decision in *Randi I*. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A104022 -- The People v. Keith Hunter.**

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)



STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, June 09, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J. Parrilli J., Pollak J., and I. Calanoc, Deputy Clerk.

A102825    The People,  
              v.  
              Annmarie Husack.  
Cause called and argued by Raymond Schwarte, counsel for appellant, and Matthew Boyle, counsel for respondent. Cause ordered submitted.

A101223    The People,  
              v.  
              Jorge Antonio Pantoja.  
Cause called and argued by John McCabe, counsel for appellant, and Sharon Birenbaum, counsel for respondent. Cause ordered submitted.

A100703    In re the Marriage of Richard Miller and  
A101340    Angela Browne-Miller.  
A102617  
              Angela Browne-Miller,  
              v.  
              Richard Miller.  
Cause called and argued by Ozro Childs, counsel for appellant, and Bernard Wolf, counsel for respondent. Cause ordered submitted.

A103656    Sovereign General Insurance  
              Services, Inc.,  
              v.  
              AON Limited, et al.  
Cause called and argued by Dominic Flamiano, counsel for appellant, and Eliot Hudson, counsel for respondents. Cause ordered submitted.

COURT ADJOURNED

Wednesday, June 9, 2004 (continued)

Division Four

**A099814 -- The People v. Duane A. Nason.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J.  
(Not for Publication.)

Division Five

**A101754 -- K.M. v. E.G.**

The Court: Order Modifying Opinion and Denying Rehearing.

It is ordered that the opinion filed herein on May10, 2004, be modified as follows: (See order.) There is no change in the judgment. The petition for rehearing is denied. Jones, P.J. (Certified for Publication.)

**A103394 -- Joseph J. Schwede et al. v. Judy Lee Barrett et al.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J.  
(Not for Publication.)

Thursday, June 10, 2004

Division Two

**A101809 -- The People v. Monica E. Butler.**

Butler's conviction under section 487, subdivision (a), for grand theft, and her conviction under section 496, subdivision (a), for receiving stolen property, are reversed. The trial court is directed to vacate the verdicts with respect to the charge of grand theft in Count 9 and the charge of receiving stolen property in Count 10 of the amended information in Case No. SC052415, and to prepare and forward to the Department of Corrections an amended abstract of judgment. In all other respects the judgments in Case Nos. SC049259 and SC052415 are affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Five

**A102038 -- The People v. Lee Naranjo.**

Because the amount of restitution must be reduced by \$121,320, the restitution order and related probation condition is modified from \$147,263.57 to \$25,943.57. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A101124 -- Jerrod Popejoy v. Jack In The Box, Inc.; Ricky Gomez et al.**

The judgment of dismissal in favor of Jack In The Box is affirmed. Jack In The Box shall recover its costs on appeal. Simons, J. We Concur: Stevens, Acting P.J. Gemello, J. (Not for Publication.)

**A103479 -- City and County of San Francisco et al. v. Cobra Solutions, Inc., et al.**

The order disqualifying the City Attorney's Office is affirmed. Gemello, J. I Concur: Jones, P.J. (See dissenting opinion by Simons, J.) (Certified for Publication.)

Thursday, June 10, 2004 (continued)

**A101833 -- The Ratcliff Architects et al. v. Dillingham Construction, N.A., Inc.**

The judgment is affirmed except with respect to Architect's sixth cause of action for indemnification from Dillingham. With respect to that claim, the judgment of dismissal is reversed and the matter is remanded for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION FIVE

June 10, 2004

Court convened at 1:00 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J., Simons, J., and Mary P. Quilez, Deputy Clerk.

A102489      Insurance Commissioner of the State of California  
                 v.  
                 Golden Eagle Insurance Company;

Jim Francis.

Cause called and argued by Timothy A. Gonzales, counsel for appellant, and by Jon R. Williams, counsel for respondent. Cause ordered submitted.

Court adjourned at 1:45 p.m.

Friday, June 11, 2004

Division One

**A103668 -- The People v. Brian William Flores.**

The search was valid as an inventory search that produced items establishing probable cause to search for drugs. The order denying the motion to suppress is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A104703 -- Jeffrey Garrett Fredenburg v. City of Fremont et al.**

The judgment of dismissal is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A103685 -- Jeffrey Garrett Fredenburg v. City of Fremont et al.**

The summary judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Certified for Publication.)

Division Two

**A101086 -- The People v. Don Everett Allen, Jr.**

By the Court: The petition for rehearing is denied. Kline, P.J.

**A105104 -- The People v. Robert Lee Ham.**

Our review of the record indicates that appellant was represented by counsel throughout the aforementioned proceedings; that there was no sentencing error; and that there are no issues that require further briefing. The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A104344 -- The People v. Ernest Lamar Johnson.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Friday, June 11, 2004 (continued)

**A104530 -- USI of Northern California Insurance Services, Inc. v. Gwenlyn Sue Dituri.**

By the Court: Upon request of counsel for appellant, the appeal is dismissed and the remittitur is to issue forthwith. Kline, P.J.

Division Three

**A106759 -- Santa Rosa City Schools v. Workers' Compensation Appeals Board and Mary Pappas.**

By the Court: On June 10, 2004, petitioner Santa Rosa City Schools filed a petition for a writ of review seeking to annul respondent Workers' Compensation Appeals Board's April 28, 2004 Order Denying Reconsideration. Petitioner has not included as an exhibit a copy of the order to be reviewed, as required by California Rules of Court, rule 57(a). Accordingly, the petition for a writ of review is denied. (McGuiness, P.J. & Corrigan, J. participating.) McGuiness, P.J.

Monday, June 14, 2004

Division Two

**A106076 -- Cecil R. Hawkins v. Toyota Motor Credit Corporation.**

By the Court: Appellant having failed to procure the record on appeal within the time allowed or within any valid extension of time, and having failed to show good cause for relief from default, the appeal filed March 5, 2004, is dismissed. (See Cal. Rules of Court, rule 8(b)(1).) Kline, P.J.

**A101863 -- Gregory Allen Marvin v. Steven Gourley.**

The judgment is affirmed. Costs on appeal to Marvin. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

**A104340 -- The People v. Daniel Garcia.**

The judgment is affirmed. Corrigan, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

**A102825 -- The People v. Annmarie Husack.**

Judgment affirmed. Parrilli, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A099189 -- In re the Trusteeship of the Pinoleville Indians.**

The judgment is affirmed. The trustees' request that appellants reimburse the Trust for attorney fees and costs associated with submitting the trustees' amicus curiae brief is denied. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

**A104286 -- In re the Marriage of Eric and Tina Traub.**

The order is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)



Monday, June 14, 2004 (continued)

Division Four

**A104124 -- In re the Marriage of Sheralyn Rene and David Wayne Vaughan.**

The purported appeal from the order denying the motion for new trial is dismissed. The judgment, as amended by the trial court, is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Tuesday, June 15, 2004

Division One

**A103768 -- The People v. Britton Mode.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

**A104332 -- In re Lisa P., a Person Coming Under the Juvenile Court Law. The People v. Lisa P.**

The orders of the juvenile court are affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

**A105386 -- The People v. Richard James Thomas.**

We find no arguable issues after a full review of the record and, accordingly, affirm the judgment. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Three

**A104763 -- The People v. Michael E. McLaughlin.**

The judgment is reversed. The matter is remanded with instructions to permit McLaughlin to withdraw his plea. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Tuesday, June 15, 2004 (continued)

**A100703, A101340, A102617 -- In re the Marriage of Richard Miller and Angela Browne-Miller.**

For the reasons outlined above: (1) The September 5, 2002 order is reversed to the extent it denies Angela's motion to set aside the stipulated judgment and her related claims and motions, including the alternative motion for division of newly disclosed assets, and orders her to reimburse Richard \$170,000. The matter is remanded to the trial court with directions to reevaluate the evidence, prepare a new statement of decision that adequately reveals the factual and legal bases for its conclusions, and issue a new order. (2) The November 14, 2002 order is reversed to the extent it denies Angela's request for attorney fees and litigation costs, grants Richard's motions for reimbursement of both \$170,000 and \$120,000 in pendente lite spousal support, and orders Angela to pay Richard \$50,000 in sanctions. The matter is remanded to the trial court with directions to reevaluate the evidence, prepare a new statement of decision that adequately reveals the factual and legal bases for its conclusions, and issue a new order. (3) The April 30, 2003 order is reversed to the extent it imputes to Angela \$1,666 per month in interest income, and the matter is remanded for recalculation of child support. In all other respects the orders are affirmed. Angela shall recover her costs on appeal. (Cal. Rules of Court, rule 27(a)(3).) Her request for attorney fees on appeal must be addressed to the trial court in the first instance. (*Cheriton, supra*, 92 Cal.App.4th at p. 320; *In re Marriage of Schofield* (1998) 62 Cal.App.4th 131, 140-141.) Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A103586 -- In re Henry V., a Person Coming Under the Juvenile Court Law. San Mateo County Social Services Agency v. Karla C.**

The dispositional order is reversed. The matter is remanded for further proceedings consistent with the views expressed in this opinion, and with consideration of Henry's current circumstances. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Certified for Publication.)

Tuesday, June 15, 2004 (continued)

Division Four

**A103485 -- Gerry Buckosky et al. v. Virginia Reiss et al.**

The judgment of dismissal is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A104975 -- The People v. Neal Grayson Taylor.**

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

**A103092 -- The People v. Humberto Garcia, Jr.**

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

**A103479 -- City and County of San Francisco et al. v. Cobra Solutions, Inc., et al.**

By the Court: The opinion filed June 10, 2004 is modified by adding amicus curiae counsel as follows: Bill Lockyer, Attorney General, Jacob Appelsmith, Senior Assistant Attorney General, Barbara J. Seidman and Kenneth L. Swenson, Deputy Attorneys General as Amicus Curiae on behalf of Plaintiff and Appellant. The modification does not affect the judgment. Jones, P.J. (Certified for Publication.)

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION FIVE

June 15, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J., Gemello, J., and Mary P. Quilez, Deputy Clerk.

- A103191      Disabled American Veterans  
                 v.  
                 Eddie C. Welbon  
                 Cause called and argued by Eddie C. Welbon, appellant, appearing in pro  
                 per, and by Daniel James Kelly, counsel for respondent.
- A101950      Jun Wai Tom  
                 v.  
                 City and County of San Francisco  
                 Cause called and argued by Andrew W. Schwartz, counsel for appellant  
                 and by Andrew M. Zacks, counsel for respondent. Cause ordered  
                 submitted.
- A104046      In re Jennifer Nguyen  
                 v.  
                 San Francisco Unified School District.  
                 Cause called and argued by Ryan A. Kent, for appellant, and by Ellen  
                 Foreman, Deputy Attorney General, counsel for respondent. Cause ordered  
                 submitted.

A103113      The People

v.

Bianca M..

Cause called and argued by Alan Stern, counsel for appellant appearing by teleconference, and by Michael Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court adjourned at 11:00 p.m.

Wednesday, June 16, 2004

Division Two

**A102873 -- Patricia Samples v. Bill Bockyer, as Attorney General, etc.**

The order denying Samples's motion for a preliminary injunction is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Wednesday, June 16, 2004

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Ruvolo, J., and S. Graham, Deputy Clerk.

A102338     The People

v.

Orlando Malave

Cause called and argued by Wilson Schooley, counsel for appellant and David Baskind, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Haerle joined the bench. Presiding Justice Kline acknowledged that today's proceedings marked the last oral argument that Deputy Clerk, Susan Graham would be participating in as she has been promoted to Assistant Clerk/Administrator after working for the First District Court of Appeal for 25 years. Justice Lambden left the bench.

A101011     The People

v.

Jose Francisco Guevara

A105127     In re Jose Francisco Guevara, on Habeas Corpus

Cause called and argued by Richard Such, counsel for appellant and Ryan McCarroll, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A102210     Thomas M. Meacham

v.

FM Industries, Inc.

Cause called and argued by Jeffrey F. Ryan, counsel for appellant and Eric Haiman, counsel for respondent. Cause ordered submitted.



A100240 R. Thomas Fair  
v.  
Karl E. Bakhtiari, et al.  
Cause called and argued by Gilbert R. Serota, counsel for appellant and  
Arthur J. Shartsis, counsel for respondent. Cause ordered submitted.

A099241 Alexander Gorovitz  
v.  
Carole Ann Marshall  
Cause called and argued by Jeff Lochner, counsel for appellant Gorovitz  
and (telephonically) by Will Thomlinson, counsel for respondent. Cause  
ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Haerle, J., Lambden, J., Ruvolo, J.  
and I. Santos, Deputy Clerk.

A104117 Michael J. Seligsohn et al.,  
v.  
Philip R. Day, Jr. et al.  
Cause called and argued by William Sortor, counsel for appellant, and  
Jeffrey Sloan, counsel for respondent. Cause ordered submitted.

A104680 Philip Jameson,  
v.  
Sutter Medical Center of Santa Rosa.  
Cause called and argued by Douglas C. Fladseth, counsel for appellant, and  
(telephonically) by Carolyn Oill, counsel for respondent. Cause ordered  
submitted.

**COURT ADJOURNED.**

Wednesday, June 16, 2004 (continued)

Division Four

**A101905 -- The People v. Charles Lloyd Sanders.**

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A103683 -- Jingyan Zhu et al. v. Cypress Abbey Company et al.**

The summary judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Thursday, June 17, 2004

Division Two

**A104021 -- The People v. Woodrow Paul Chaney.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J.  
(Not for Publication.)

Division Four

**A104023 -- The People v. Lemon Lipscomb.**

The burglary convictions are reversed. The other convictions are affirmed.  
The cause is remanded to the trial court for resentencing or, if the prosecution is so  
inclined, retrial of the burglary counts. Kay, P.J. We Concur: Reardon, J.,  
Sepulveda, J. (Not for Publication.)

Friday, June 18, 2004

Division One

**A102840 -- Kevin D. Lewis et al. v. Chevron USA Inc.**

The summary judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Certified for Publication.)

Division Three

**A102582 -- In re Francisco B., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Social Services v. Anajulique W.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

**A105499 -- In re Tyler G., a Person Coming Under the Juvenile Court Law. The People v. Tyler G.**

The orders of the juvenile courts are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A087913 -- The People v. Bernard King.**

By the Court: Good cause appearing, appellant's Motion to Recall the Remittitur and to Refile Opinion is granted. The remittitur dated April 17, 2002, is ordered stricken, and the appeal is restored to active status. The Clerk of the San Francisco County Superior Court is directed to return a certified copy of the remittitur to this Court for cancellation forthwith. The Clerk of this Court is directed to reissue and refile the opinion of this Court originally filed February 15, 2002, to enable counsel to petition for review in the Supreme Court. McGuiness, P.J.

**A103269 -- County of Solano v. Lionsgate Corporation.**

**A105131 -- County of Solano v. Lionsgate Development Corporation, et al.**

By the Court: On the court's own motion, the above-captioned appeals are ordered consolidated for purposes of oral argument and decision. Counsel for all parties are directed to list both case numbers on all future pleadings. McGuiness, P.J.

Friday, June 18, 2004 (continued)

**A102632 -- In re Brianna Z., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Social Services v. Anajulique W.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

**A104178 -- In re Tricia H., a Person Coming Under the Juvenile Court Law. The People v. Tricia H.**

The dispositional order committing the minor to the California Youth Authority is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

**A103796 -- In re John B., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. John B., Sr.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A103113 -- In re Bianca M., a Person Coming Under the Juvenile Court Law. The People v. Bianca M.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Monday, June 21, 2004

Division One

**A103186 -- The People v. Ricardo Casillas.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A104365 -- In re Sean E., a Person Coming Under the Juvenile Court Law. The People v. Sean E.**

The jurisdictional and dispositional orders are affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A101410 -- Orville H. Griffin v. D/C Distribution Corporation.**

The judgment is reversed. Griffin is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

**A104466 -- City of St. Helena v. Public Utilities Commission; Napa Valley Wine Train, Inc., R.P.I.**

The Commission's decision in *NVWT III* (Dec. No. 99-08-018), *NVWT V* (Dec. No. 03-01-042), *NVWT VI* (Dec. No. 03-10-024) and *NVWT VII* (Dec. No. 03-10-025) are annulled to the extent they deem the Wine Train a common carrier providing transportation subject to regulation as a public utility. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Certified for Partial Publication.)

Division Five

**A103191 -- Disabled American Veterans v. Eddie C. Welbon.**

The order granting the preliminary injunction is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A106358 -- Annette M. v. The Superior Court of Contra Costa County;  
Contra Costa Department of Social Services, R.P.I.**

The order to show cause is discharged, and the petition is denied on its merits. (Cal. Const., art VI, § 14; Cal. Rules of Court, rule 39.1B(o); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) The request for stay is also denied. Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26.

(§ 366.26, subd. (1).) Because the section 366.26 hearing is set for June 30, 2004, our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

Tuesday, June 22, 2004

Division One

**A104613 -- The People v. Noah Agape Bunag.**

We have thoroughly reviewed the record and find no arguable issues. While we have selected certain matters for discussion, we have scrutinized the record in its entirety. There are no issues requiring further briefing. The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A098201 -- In re the Marriage of Michelle Watson and Babar Hamirani.**

The trial court thoughtfully considered the numerous factors that are involved in exercising its discretion in child custody and visitation cases. Our review of the record convinces us that the trial court did not abuse its discretion. The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A102205 -- The People v. Darryeal Woodrow Wilson.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A103942 -- Thomas Corbett v. Hayward Dodge, Inc.**

The judgment is affirmed. Corbett is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication.)



Tuesday, June 22, 2004 (continued)

**A103320 -- In re George Scott on Habeas Corpus.**

The petition for writ of habeas corpus is granted. The Board is ordered to vacate the denial of parole and to conduct a new parole suitability hearing for Scott no later than the currently scheduled hearing date, July 20, 2004. At the hearing, the Board shall consider all of the psychological evaluations made of Scott since 1999 as favoring his application for a parole date. The Board shall also consider evidence of all relevant circumstances identified in its own regulations as tending to show a prisoner suitable for release from prison. Kline, P.J. I Concur: Lambden, J. (See concurring and dissenting opinion of Haerle, J.) (Certified for Publication.)

**A101084 -- The People v. Isreal Soria.**

The cause is remanded to the trial court with directions to correct the abstract of judgment to reflect the court's sentence of nine years in state prison and the midterm on count three, and forward a certified copy to the Department of Corrections. The judgment is otherwise affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

**A098722 -- The People v. Carlos Alcantara.**

The matter is remanded to the trial court for resentencing in accordance with this opinion. In all other respects, the judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A102769 -- The People v. Shawn Eve Cancilla.**

The judgment is affirmed. Pollak, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

**A099199 -- Adam Peart, a Minor, et al. v. Paul E. Ferro, et al.**

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Tuesday, June 22, 2004 (continued)

**A102513 -- Stanley Janik v. Rudy, Exelrod & Zieff et al.**

The judgment is reversed. Plaintiff is to recover his costs on appeal.

Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Certified for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, June 22, 2004

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kay, P.J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Virgil Aguilar, Bailiff.

A103032      Russell Will et al.  
                 v.  
                 Paul Sherman et al.  
Cause called. Orrin Grover argued for appellants Will et al. Jefferson Frazier teleargued for respondents. Cause submitted.

A101382      Aozora Bank, Ltd.  
                 v.  
                 1333 North California Blvd.  
Cause called. Macelle Mihaila argued for appellant 1333. Catherine Meulemans argued for respondent. Cause submitted.

A101668      People  
A104440      v.  
                 Steven Price  
Causes called. Richard J. Krech argued for appellant Price. Michael Chamberlain argued for respondent. Causes submitted.

At this point the court reconstituted itself to include: Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A104431      People  
                 v.  
                 Daniel K.  
Cause called. Richard J. Krech argued for appellant Daniel K. Ralph Sivilla argued for respondent. Cause submitted.

A099483 David Phillips et al.

A099484 v.

A099770 Michael Verna et al.

A100270 Causes called. David Phillips argued for appellants Phillips. Kirk C. Jenkins and Mitchell C. Tilner argued for respondents. Causes submitted.

The court recessed at 11:30 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, June 22, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Virgil Aguilar, Bailiff.

A100481

People

v.

Michael Spencer

Cause called. Robert Bryzman argued for appellant Spencer. Sharon Wooden argued for respondent. Cause submitted.

The Court adjourned at 1:47 p.m.

Tuesday, June 22, 2004 (continued)

Division Five

**A101606 -- The People v. Lache K. Poindexter.**

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A101950 -- Jun Wai Tom et al. v. City and County of San Francisco et al.**

The judgment is affirmed. The request for judicial notice is denied. Costs to respondents. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Wednesday, June 23, 2004

Division Two

**A106076 -- Cecil R. Hawkins v. Toyota Motor Credit Corporation.**

By the Court: Appellant's motion to vacate the dismissal filed by this court on June 14, 2004 and to reinstate the appeal is granted and this appeal is hereby restored to active status. The Clerk of the Alameda Superior Court is directed to prepare, certify and transmit the record on appeal to this court and to the appropriate parties within 30 days from the date of this order. Kline, P.J.

**A105540 -- Karen Jew v. Deborah Kochan, et al.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a)(1) of the California Rules of Court, the appeal is dismissed. Kline, P.J.

**A105251 & A105672 -- Pamela Wiget v. 2195 Green Street Condominium Association, et al.**

By the Court: Counsel having so stipulated, the appeals are dismissed, with each party to bear its own costs on both appeals. The remittitur is to issue forthwith. Kline, P.J.

STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, June 23, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Corrigan, J., and I. Calanoc, Deputy Clerk.

A101102 Enrique Cervantes,

v.

John G. Hanlin.

McGuiness, J. announced that the panel for this case is comprised of McGuiness, J., Corrigan, J. and Parrilli, J.; however, Parrilli, J. is away from the court but will have access to the digitally recorded oral argument. The court then proceeded. Cause called and argued by Gregory Anthony, counsel for appellant, and David Weaver, counsel for respondent. Cause ordered submitted.

A103705 Peggy Belcher-Dixon,

v.

Rita Saenz, as Director, et al.

Pollak, J. approached the bench. The panel for this case is comprised of McGuiness, P.J., Pollak, J. and Corrigan, J. Cause called and argued by W. Warren Binford, counsel for appellant, and Beverly Meyers, counsel for respondents. Cause ordered submitted. Corrigan, J. left the bench after this case.

A103962 Joan Levy Zentner et al.,

v.

Wells Fargo Bank et al.

McGuiness, P.J. announced Parrilli, J.'s absence and informed all parties that the panel is now comprised of McGuiness, P.J., Pollak, J. and Parrilli, J. The court proceeded with oral argument; cause called and argued by William Lukens, counsel for appellants, and Andrew Zabronsky, counsel for respondents. Cause ordered submitted.



A100349    Roger L. Hanke et al.,  
                 v.  
                 Auto Dealer's Exchange, Inc.  
                 Cause called and argued by Loren Kraus, counsel for appellant, and Victoria  
                 DeGoff, counsel for respondents. Cause ordered submitted.

A102944    Mark Kharmats,  
                 v.  
                 Richard Orser.  
                 Cause called and argued by Reid Schantz, counsel for appellant, and Mark  
                 Kharmats, respondent in pro per. Cause ordered submitted.

COURT ADJOURNED

Wednesday, June 23, 2004 (continued)

Division Four

**A101148 -- In re Kathryn C., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Timothy C.**

The order is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

**A104715 -- In re the Marriage of Patricia M. Rivasplata and George L. Rivasplata.**

The judgment determining the parties' interests in the real property known as 20 Royce Way is reversed and the matter is remanded to the trial court for proceedings consistent with this opinion. We note that the judgment omits the trial court's order that wife's former name of Rodriguez be restored. The trial court is directed to correct the judgment to restore wife's former name. In all other respects, the judgment is affirmed. Wife is to recover her costs on appeal. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A100481 -- The People v. John William Sloan.**

The judgment is modified and affirmed as modified. The trial court is directed to prepare a modified abstract of judgment reflecting a sentence correction of 15 years to life for count one. The trial court shall forward the modified abstract of judgment to the Department of Corrections. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Division Five

**A102961 -- Michael DiPirro v. American Isuzu Motors Inc., et al.**

The judgment is affirmed. Respondents shall recover their costs in defending this appeal. Simons, J. We Concur: Jones, P.J., Stevens, J. (Certified for Partial Publication.)

Wednesday, June 23, 2004 (continued)

**A101906 -- The People v. Philip Andrew Hunter.**

The trial court is ordered to prepare and to forward to the Department of Corrections an amended abstract of judgment showing appellant suffered three, not four prior serious felony convictions within the meaning of section 667, subdivision (a)(1). Thus, appellant's sentence must be reduced from 45 years to life in prison to 40 years to life in prison. In all other respects, the judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A104400 -- In re Juan S., a Person Coming Under the Juvenile Court Law. The People v. Juan S.**

The matter is remanded for modification of the disposition order to state the maximum period of confinement. In all other respects, the judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

Thursday, June 24, 2004

Division One

**A103825 -- Mildred Sullivan v. Bank of America N.A.**

In this very close case in which we are required to view the evidence and reasonable inferences in the light most favorable to appellant, we conclude that the trial court erred in granting the motion for summary judgment with respect to the first cause of action for breach of contract and therefore reverse the judgment dismissing appellant's action against BofA. Our decision does not affect the order granting a summary adjudication in favor of BofA on the second cause of action for negligence, which appellant has not challenged on appeal. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A100946 -- Sheryle Barkat v. USX Corporation.**

The judgment is affirmed. U.S. Steel is awarded costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

**A103705 -- Peggy Belcher-Dixon v. Rita Saenz.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A101999 -- The People v. Sammie Lee Ford.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A101103 -- The People v. Julius Lee Jackson.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Thursday, June 24, 2004 (continued)

**A104450 -- In re Andrew M., a Person Coming Under the Juvenile Court Law. The People v. Andrew M.**

The judgment is affirmed. McGuinness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

**A104593 -- The People v. Hans E. Selk.**

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

**A102215 -- In re Kamillo W., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Avery G.**

The order is affirmed. Pollak, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Division Four

**A101370 -- The People v. Stephen Wayne Tessler.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A103032 -- Russell Will et al. v. Paul Sherman et al.**

The judgment of dismissal is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A104046 -- Jennifer Nguyen v. San Francisco Unified School District.**

The judgment is reversed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

Friday, June 25, 2004

Division One

**A104821 -- In re Heriberto D., a Person Coming Under the Juvenile Court Law. The People v. Heriberto D.**

The ruling and judgment appealed from are affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Three

**A100958 -- The People v. David Lavell William Hill.**

By the Court: Order Modifying Opinion. The opinion filed in this case on May 28, 2004, is hereby ORDERED modified as follows: (See order.) There is no change in the judgment. McGuiness, P.J. (Certified for Partial Publication.)

**A098206 -- The People v. Frederick Vincent Thiecke.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A103657 -- Samir Totah et al. v. Carol Trott.**

The judgment is affirmed. In affirming the trial court's decision that a trust was created we express no opinion on the underlying dispute as to whether any property other than the policies was ever made part of the trust estate. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Monday, June 28, 2004

Division One

**A096017 -- The People v. Curtis Dean Anderson.**

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

**A104425 -- In re Richard B., a Person Coming Under the Juvenile Court Law. The People v. Richard B.**

We find that the trial court's mistaken pronouncement of the preponderance of the evidence standard of proof of capacity was not prejudicial to appellant, however. The test of reversible error where an incorrect and lesser burden of proof has been applied is the federal standard established by *Chapman v. California* (1967) 386 U.S. 18, 24: the record must demonstrate beyond a reasonable doubt that the error did not contribute in any way to the judgment. (See *People v. Hurtado* (2002) 28 Cal.4th 1179, 1193-1194; *People v. James* (2000) 81 Cal.App.4th 1343, 1360-1361; *People v. Elguera* (1992) 8 Cal.App.4th 1214, 1220.) Here, appellant's responses to the *Gladys R.* questionnaires overwhelmingly proved his capacity to understand that the offenses he committed were wrong, which tend to indicate that the error was harmless beyond a reasonable doubt. (See *People v. Memro* (1995) 11 Cal.4th 786, 847.) The trial court also announced that even "independent of the *Gladys R.* questionnaire," appellant's age of nearly 14, the nature of the offenses, and his "conduct . . . at the scene" established his understanding of "the wrongfulness of his acts." We therefore conclude that beyond a reasonable doubt the trial court would have made the same finding on the issue of capacity if the correct, clear and convincing standard of proof had been applied. The error was harmless and does not require reversal. Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A101110 -- The People v. Noble Ward Evans.**

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Monday, June 28, 2004 (continued)

Division Two

**A099875 -- The People v. Jermaine Monteil Paschal.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A100349 -- Roger L. Hanke et al. v. California Auto Dealer's Exchange, Inc.**

The judgment is affirmed. Hanke is to recover his costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A101111 -- The People v. Gonzalo Serafin Alcala.**

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

**A104707 -- The People v. Linda Jan Flores.**

The judgment and sentence are affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

**A100349 -- Roger L. Hanke et al. v. California Auto Dealers's Exchange, Inc.**

The judgment is affirmed. Hanke is to recover his costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A104423 -- In re Sierra S., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Charles S.**

The order is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)



Monday, June 28, 2004 (continued)

**A103962 -- Joan Levy Zentner et al. v. Wells Fargo Bank, N.A.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

**A102429 -- In re A.M., a Person Coming Under the Juvenile Court Law. The People v. A.M.**

The dispositional order is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A103068 -- The People v. Cary Lee McDaniel.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A104367 -- City of Modesto Redevelopment Agency et al. v. The Superior Court of San Francisco; The Dow Chemical Company et al.**

The Court: The petition for rehearing filed by defendant and real party in interest Hoyt Corporation on behalf of itself and codefendants American Laundry Machinery, Inc., and Cooper Industries on June 14, 2004, is denied. The request for judicial notice filed by petitioners on June 23, 2004, is denied. The opinion filed herein on May 28, 2004, is ordered modified as follows: (See order.) There is no change in the judgment. Kay, P.J. (Certified for Publication.)

Tuesday, June 29, 2004

Division One

**A101997 -- The People v. Ernest Alexander.**

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A105756 -- The People v. Robert S. Hughes.**

We find no arguable issues after a full review of the record and, accordingly, affirm the judgment. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A104284 -- The People v. David Lynn Campbell.**

The judgment is reversed as to the sentence and remanded for resentencing and further proceedings consistent with this opinion. In all other respects, the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Certified for Publication.)

**A104214 -- The People v. Robert A. Garcia.**

The order revoking appellant's probation and sentence imposed are affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

**A104151 -- In re Maria Elena G., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Glenda G.**

The July 24, 2003, order denying Glenda G.'s section 388 petitions regarding Maria Elena, and the July 25, 2003, order terminating her parental rights to Maria Elena, are affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Tuesday, June 29, 2004 (continued)

**A102944 -- Mark Kharmats v. Richard Orser.**

The appeal is dismissed. Parrilli, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

**A102667 -- The People v. George Lama.**

The appeal is dismissed. Appellant's request for judicial notice is denied as moot. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

**A103656 -- Sovereign General Insurance Services, Inc. v. Aon Limited.**

The order quashing service of process and dismissing the complaint is reversed. SGI is to recover its costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Division Four

**A101382 -- Aozora Bank, LTD v. 1333 North California Boulevard.**

The order awarding attorney's fees to Bank is reversed, with directions to enter an order denying Bank's fee motion. Costs on appeal to the Partnership. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Certified for Publication.)

**A105347 -- In re Michael D., a Person Coming Under the Juvenile Court Law. The People v. Michael D.**

The dispositional order is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A104431 -- In re Daniel K., a Person Coming Under the Juvenile Court Law. The People v. Daniel K.**

The orders denying appellant's motion to suppress and placing him on informal probation are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Tuesday, June 29, 2004 (continued)

**A103838 -- The People v. Jamar Byron Lindsey.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J.  
(Not for Publication.)

**A102318 -- The People v. Justin David Silva.**

The judgment of conviction is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

**A098944 -- The People v. Michael Spencer.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

**A103826 -- Charles J. Berry v. Dylan E. Berry et al.**

Appellant's petition for rehearing is denied. This modification does not change the judgment. Jones, P.J. (Not for Publication.)

**A104579 -- The People v. Israel Laguna Gomez.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J.  
(Not for Publication.)

Wednesday, June 30, 2004

Division One

**A101246 -- Rose Bell, et al. v. Farmers Insurance Exchange.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

**A102486 -- Shomen Kung Chia et al. v. Christine Hanlon et al.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A102765 -- Jian Hua Li v. Ernest Orlando Lawrence Berkeley National Laboratory et al.**

Plaintiff has stated no basis for reversing the judgment. The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

**A104876 -- Civil Service Employees Insurance Co. v. The Superior Court of San Francisco County; Jay Tobin, R.P.I.**

The superior court is directed to vacate its order denying CSE's motion for summary judgment and to enter a new and different order granting that motion. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A099264 -- The People v. James Robert Preston.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A105047 -- In re Alan S., a Person Coming Under the Juvenile Court Law. The People v. Alan S.**

The jurisdictional and dispositional orders of the superior court are affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Wednesday, June 30, 2004 (continued)

Division Three

**A099906 -- Richard A. Wells, et al. v. Osvaldo Rego Monteiro.**

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

**A102922 -- The People v. John Raymond Hanson.**

The judgment is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A101668, A104440 -- The People v. Steven Lloyd Price.**

The judgments are reversed and remanded to the trial court for resentencing. In all other respects, the judgments are affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Certified for Partial Publication.)

**A103681 -- Guy Seaton et al v. Fildres Runez.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

**A099095 -- The People v. William Edward Kilday.**

The judgment is affirmed in part, and reversed and remanded as to counts three, five, and seven. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A104980 -- The People v. Campanella Martin.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Wednesday, June 30, 2004 (continued)

**A102843 -- Renee Milligan v. Golden Gate Bridge Highway and Transportation District et al.**

The Court: The opinion filed June 4, 2004, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports, and it is so ordered. Jones, P.J. (Certified for Publication.)